IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4345 OF 1996

The Sangli District Central
Co-op. Bank Limited Petitioner

versus

The State of Maharashtra
and others Respondents

Prashant Naik, adv. for petitioner.

N.P.Deshpande, AGP for R.1 to 4.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, J.

DATE : 9th December 2004

PC :

1. Heard advocates.

2. By this petition the petitioner bank is seeking a declaration that the petitioner is under no obligation to reserve posts in promotional category for backward classes in view of decision of the Supreme Court in Indra Sawhney Vs. Union of India and others reported in AIR-1993-SC-477, with effect from 16th November 1992, notwithstanding the order passed by this

Court in Writ Petition No.508 of 1998 dated 15th June 1988 in Sangli Sah. Banks Association Vs. State of Maharashtra reported in 1989-Mh.L.J.-173. The petitioner is also seeking to relieve the petitioner and its officers from the undertaking given to this Court in Writ Petition No.508 of 1988 to reserve promotional posts for Backward Classes in the petitioner bank.

3. The petitioner is a co-operative society deemed to be registered under the Maharashtra Co-operative Societies Act, 1960 (hereinafter for the sake of brevity referred to as "MCS Act"). The petitioner is a Central Bank under sub section (6) of section 2 of MCS Act and is carrying on banking business in Sangli District. On 25th August 1977 the State Government issued an order u/s 79 of MCS Act by virtue of which all co-operative societies employing 10 or more employees were required to reserve posts for backward classes in accordance with directives issued from time to time by the State Government. Accordingly 34% seats were reserved for direct recruit and 24% seats were reserved for promotional posts. The constitutional validity of the order of State Government dated 25th

August 1977 was upheld by the Division Bench of this Court in Sangli Zilla Sahakari Nagari Banks Association Vs. State of Maharashtra (supra). The present petitioner had also challenged the validity of the said order of the State Government dated 25th August 1977 requiring the petitioner to reserve the posts. In the said writ petition, a consent order was passed on 15th June 1988 by virtue of which the petitioner agreed for reservation of 34% posts for nomination and 24% seats for promotional posts. The petitioner contends that in the land mark decision in Indra Sawhney Vs. Union of India (supra), the Supreme Court has held that reservation for backward classes for promotional posts is constitutionally impermissible. The effect of this judgement was made prospective. The petitioner bank is therefore not liable to make any reservation for backward classes in the promotional posts after the judgement of the Supreme Court and a clarification to that extent was also issued vide letter dated 28th September 1997 of the Secretary (Co-operation), Government of Maharashtra.

4. We have heard Mr.Prashant Naik for petitioner and Mr.Nitin Deshpande, AGP for respondents.

5. The order of State Government dated 25th August 1977 under the provisions of sub section (i) of section 79A of MCS Act reads as under :-

"No.CSM-1377/35758/6-C,
Agriculture & Co-operation
Department, Mantralaya,
Bombay-32.
25th August, 1977.

ORDER

Whereas it has come to the notice of Government that Co-operative Institutions employing ten persons or more under them are not implementing fully Government orders regarding the recruitment of new persons and promotion of the existing persons under them in accordance with the policy laid down by Government.

And whereas the State Government is satisfied that for the purpose of securing proper implementation of development and welfare programmes approved or undertaken by Government it is expedient to issue directives to all co-operative institutions employing 10 persons or more under them in the State under provisions of sub section (i) of section 79A of the Maharashtra Co-operative Societies Act, 1960, the State Government in exercise of the powers vested in the State Government under sub section (i) of Section 79A of the Maharashtra Co-operative Societies Act, 1960, hereby issues the following directions to all such Co-operative Institutions in the State of Maharashtra.

That while recruiting new persons and promoting the existing persons, the Co-operative Institutions employing 10 persons or more shall adhere to a policy of (i) providing reservation of post to the backward sections of the society and to the backward class persons as per the percentages laid down for each category by Government from time to time and recruiting these persons as per rules of Government and (ii) for carrying forward of vacancies to wipe of the

backlog in the recruitment of backward class persons.

By order and in the name of the Governor of Maharashtra.

Sd/-
A.S.A.Khathatary
Deputy Secretary to Govt. of Mah.
Agri. & Co-op. Department."

6. The constitutional validity of the order dated 25th August 1977 was challenged in Sangli Zilla Sahakari Nagari Banks Association Vs. State of Maharashtra mainly on the ground that the order is ultra vires Articles 14, 19(1)(c) and 19(1)(g) of the Constitution of India and the order was discriminatory since only certain banks were picked up for the application of the said directives. The Division Bench while repelling the challenge held that from the bare reading of the order it was quite clear that for the purpose of securing proper implementation of development and welfare programmes approved and undertaken by Government, Government thought it expedient to issue necessary directions under Section 79-A of the MCS Act to all Co-operative Institutions employing 10 persons or more under them in the State. Section 79-A does not confer arbitrary and unchannelised powers upon the State Government to issue directions. The purpose for

which the directions could be issued are enumerated in the section itself. A power is also given to the State Government to modify or cancel the directions issued under sub section (1) of Section 79-A of the Act. Therefore, it cannot be said that any unbridled or un-channelised power has been conferred upon the State Government by the said section. The words and expressions used in the section have a definite meaning and they cannot be termed as vague. The reservation policy adopted by the Government is in tune with Article 46 of the Constitution which directs the State to promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and all forms of exploitation. The directions issued under section 79-A have been issued in the interest of general public. Since this decision is taken having regard to the directive principles of the State policy, as incorporated in Article 46 of the Constitution, the restrictions, if any, are reasonable restrictions imposed in the interest of general public. Such reservation is contemplated qua societies which are employing 10 or more persons

only. Thus it applies to all Co-operative Societies where reservation policy could be reasonably carried out. The directives issued are not beyond the scope of Section 79-A of the MCS Act. The classification is also reasonable and cannot be termed as arbitrary. It was not correct to say that the order or directives only apply to certain Urban Co-operative Banks and not to others. The circular applies to all the Co-operative Institutions who are employing 10 persons or more under them. Only because the notices were issued to certain co-operative banks, it does not mean that the directives are not made applicable to others. The directives incorporated in the order dated 25th of August 1977 apply to all Co-operative Institutions employing 10 persons or more. Therefore it is not correct to say that there is any discrimination in that behalf. The challenge based on excessive delegation was also not sustainable.

7. In Indra Sawhney Vs. Union of India and others (supra), Supreme Court held that Article 16(4) does not contemplate or permit reservation in promotion. The Court overruled its earlier decisions in Rangachari (AIR-1962-SC-36) and

Karmachari Sangh (AIR 1981 SC 298). The Court, however, directed that the decision on this question shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regular/permanent basis. It was further directed that wherever reservations are already provided in the matter of promotion, be it Central Services or State Services, or for that matter services under any corporation, authority or body falling under the definition of 'State' in Article 12 - such reservations shall continue in operation for a period of five years from the date of judgement. The conclusions of majority are summarised in para 121 of the judgement. Sub Para 7 of para 121 is relevant for the purposes of this petition, which reads as follows:-

> "(7) Article 16(4) does not permit provision for reservations in the matter of promotion. This rule shall, however, have only prospective operation and shall not affect the promotions already made, whether made on regular basis or on any other basis. We direct that our decision on this question shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regular/permanent basis. It is further directed that wherever reservations are already provided in the matter of promotion - be it Central Services or State Services, or for that matter services under any Corporation, authority

> or body falling under the definition of 'State' in Art. 12 - such reservations may continue in operation for a period of five years from this day. Within this period, it would be open to the appropriate authorities to revise, modify or re-issue the relevant rules to ensure the achievement of the objective of Art.16(4). If any authority thinks that for ensuring adequate representation of 'backward class of citizens' in any service, class or category, it is necessary to provide for direct recruitment therein, it shall be open to it to do so. (Ahmadi J. expresses no opinion on this question upholding the preliminary objection of Union of India). It would not be impermissible for the State to extend concessions and relaxations to members of reserved categories in the matter of promotion without compromising the efficiency of the administration."

8. The Parliament amended Article 16 of Constitution by inserting Article 16(4)(a) with effect from 17th June 1995. The amended Article 16(4)(a) provides reservation in promotion and states that nothing in this Article shall prevent the State from making any provision for reservation in the matters of promotion, consequential seniority, to any class or classes of posts in the service under the State in favour of Scheduled Castes and Scheduled Tribes, which in the opinion of State are not adequately represented in the services under the State.

9. In view of decision of this Court in

1989-Mh.L.J.-173 (supra), it is settled position that under section 79-A of the MCS Act the State Government is empowered to issue directions to the co-operative societies which are in public interest. The directions issued to the co-operative societies by the State Government can be justified u/s 79-A as well as amended Article 16(4)(a) of Constitution. By a further Circular dated 13th January 1999, all the directions issued by GAD were made binding on the co-operative societies. Thereafter by GR dated 30th July 1999 the Government directed that the Circular dated 25th August 1977 and all other Circulars pertaining to remunerations are binding on the co-operative societies. By letter dated 10th November 2003 the Director of Marketing, Co-operative Societies, has directed the co-operative societies under him to fill up the backlog. In our opinion the submission of petitioner based on the decision in Indra Sawhney (supra) case is totally misconceived. The Supreme Court has not declared that the reservation in promotions is unconstitutional. But what was held by the Supreme Court was that Article 16(4) does not contemplate reservation in promotional posts. The decision of supreme Court was made prospective and Central Government and

State Governments and public bodies were permitted to continue the reservation policy, if already existed, for a period of five years. The amendment to Article 16 came to be effected and Article 16(4)(a) was inserted within the said period of five years. Therefore, challenge based upon the decision in Indra Sawhney's case does not survive. We, therefore, dismiss the petition with direction to the petitioner to implement the order dated 25th August 1977 and the subsequent directives of State Government relating to the reservation for backward classes in promotional posts within a period of six months from today. Petition is accordingly disposed of.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)